

Application No:10/507,272; Docket No: 10500-008
Amdt. dated July 27, 2006
Reply to Office action of March 27, 2006

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REMARKS/ARGUMENTS

The Patent Office's withdrawal of previous allowability of claims 23-29, and of the withdrawal of the rejections of claims 16-22 are acknowledged.

Presently claims 16-35 stand pending. Claims 16-31 are amended herein; entry of these amendments is respectfully requested. No new matter is added by these amendments. After entry of these amendments, claims 16-35 remain pending in this application.

The following remarks and arguments are provided, and address objections and rejections in the sequence the latter are provided in the Office action.

Maintained Rejections under 35 USC 103(a)

Claims 30-35 stand rejected under 35 USC 103(a), as being allegedly unpatentable over Carmeliet et al. (WO 015693), which is stated to "teach enhanced revascularization of acute myocardial infarcts by administration of PLGF-1 (p 17)." Specific dosages also are cited in the rejection.

Claims 30-35 as amended are not suggested by Carmeliet et al., which is silent as to topical compositions as are now claimed. Applicants note and acknowledge that the topical nature of the composition, first stated in the preamble, is a limitation of these claims. The facts that Carmeliet et al. specify numerous routes of administration (p. 9, lines 22-25) and that these specified routes do not include topical argue that a topical composition was not conceived by, and was not suggested by, Carmeliet et al.

Reconsideration and withdrawal of this basis of rejection for claims 30-35 are respectfully requested.

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Objection to the Disclosure

The Office action indicates that the priority data needs to be updated, and that appropriate correction is required. Applicants have amended the specification to add a first paragraph entitled "CROSS-REFERENCES TO RELATED APPLICATIONS." Entry is respectfully requested. It is believed that this satisfies and overcomes this objection.

Rejections under 35 USC 112

Claims 23-26, 28-29 stand rejected under 36 USC 112, first paragraph, as allegedly failing to comply with the enablement requirement. The Office action notes that it interprets the use of the term "prevention" to "guarantee without a doubt that the process or event will never occur." Applicants note without agreement that this is an extreme interpretation of the word.

To overcome this rejection, Applicants have amended claims 23 and 24, removing the term "prevention." Other changes to these claims, made to address another rejection (see next section below), additionally more clearly support the acknowledged enablement of cosmetic treatments for a number of conditions.

Applicants respectfully request reconsideration of this basis for rejection in view of these claim amendments, and withdrawal of this basis of rejection.

Rejections under 35 USC 102

Claims 16-22, 27 stand rejected under 35 USC 102(a) as being allegedly anticipated by Carmeliet et al. (WO 156593). Claims 16-22, 27, and 30-35 also stand rejected under 35 USC 102(a) as being allegedly anticipated by Ziche et al. (1997 Lab. Invest. 76(4): 517-531).

As to claims 16-22, 27, Applicants have amended claim 16 to more clearly state a method of treatment of a state; dependent claims now omit "of use" following "method." Patent law provides for the patentability of a new use of a known composition as a method claim. (See 35

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USC 100(b)). In addition, the Federal Circuit has specifically indicated the acceptability of method claims in this format as exemplified by "A method of treatment of urolithiasis and inhibiting bone reabsorption which consists of administering to a patient in need thereof an effective amount of [a known compound]." *Merck & Co. v. Teva Pharmaceuticals USA, Inc.* 347 F.3d 1367, 1372 (Fed. Cir. 2003).

The claims as now amended are not anticipated by the cited references. That Carmeliet et al. teach treating myocardially infarcted mice with PLGF dimer is not relevant to the method of claim 16, which is directed to treatment of states of the cutaneous and/or subcutaneous regions.

Similarly, Ziche et al. do not teach the methods of claims 16-22, 27. Rather, as previously stated in the August 17, 2005 Reply to the May 20, 2005 Office action, Ziche et al. "discloses the ability of PLGF-1 to elicit angiogenesis. Ziche demonstrates this in two animal models, namely in the rabbit cornea and in the chicken chorioallantoic membrane. However, as evident from the first line of the section "Discussion", this PLGF-1 property is simply a biological activity developed on normal (healthy) rabbit cornea or chorioallantoic membrane. This biological activity cannot be confused with a pharmacological, therapeutic effect that necessarily implies the capability of correcting and recovering an abnormal situation (in particular, here, one involving connective tissue alterations). This capability is not recognized nor enabled in Ziche's article, which as noted is completely silent on any envisageable therapeutic application of PLGF-1, let alone on the specific therapeutic treatment of the diseases cited in claim 16."

In view of the differences between the claims as presently amended and the teachings of Carmeliet et al. and of Ziche et al., these references do not anticipate claims 16-22, 27. Reconsideration and withdrawal of these rejections are respectfully requested.

As to claims 30-35, as amended these claims are not anticipated by Ziche et al., which is silent as to topical compositions as are now claimed. As noted above, Applicants note and acknowledge that the topical nature of the composition, first stated in the preamble, is a limitation of these claims. Per the above, Ziche et al. pertains to angiogenesis in rabbit cornea and chorioallantoic membrane, and does not teach, nor suggest, a topical composition.

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Applicants respectfully request reconsideration of this basis for rejections in view of these claim amendments, and withdrawal of this basis of rejections.

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Having overcome all rejections and objections, Applicants respectfully request that a timely Notice of Allowance be issued in this case.

The Examiner is invited to call the undersigned if clarification is needed on any aspects of this Reply/Amendment, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,



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